IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.158 OF 2006
IN
WRIT PETITION NO.7567 OF 2005

Deepak Inder Ahuja ...Appellant
Vs.
The Secretary
Hyderabad Sindh National College Board
Mumbai & Ors. ...Respondents

Mr.R.S.Apte with Mr. Mandar Limaye for Appellant
Mr.A.G.Kothari for Respondents

CORAM: SHRI D.G. DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATE : 7TH NOVEMBER, 2006.

P.C.

1. Heard the Advocate for the Petitioner and the Respondents.

2. This LPA is filed against the judgment of the learned Single Judge dated 23rd June, 2006. The Appellant/Petitioner was appointed on probation as a Principal of the High School and Junior College conducted by the Respondents at Ulhasnagar, was terminated from services. The termination of his services was on filing of the FIR against him for taking bribe in giving admission to students in College. The contention of the Petitioner before the Single Judge was that, in view of the resolution of the Respondent Committee, the services are not terminated simplicitor and the background circumstances indicate that some incident had occurred before termination and though those circumstances were not part of the termination letter, the termination is to be treated as stigmatic. The termination was punitive and the outcome of those allegations and as such it should have been preceeded by a full-fledged departmental inquiry. The submissions were heard at length but he did

not agree with the Petitioner against the LPA.

3. The learned Counsel for the Petitioner relied upon the Judgment of the Supreme Court, 1986 (3) Supreme Court Cases, 277 Jarnail Singh and Ors. Vs. State of Punjab and Ors. and placed reliance on paragraph no.32 which is as follows :

> " 32. The position is now well settled on a conspectus of the decisions referred to hereinbefore that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words,d the court in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency, or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State-respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the government circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment."

3. On the other hand Counsel for the Respondent relied on the Judgment of the Supreme Court in 2002(1) ALL M R 302 Supreme Court in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. Medical Sciences and our attention is drawn to paragraph nos.24, 29, 31

and 32.

4. [redacted] In fact these judgments relied upon by the Petitioner have been referred by the learned Single Judge and it was found by the Single Judge that from the wordings of the termination order it cannot be said that the termination order was stigmatic. Reliance was placed by the Single Judge upon Rule 5(3) of the Maharashtra Employees of Private Schools (Conditions Services) Regulation Act, 1977 which refers as under:

> . "5(3) If in the opinion of the Management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice (or salary of one month in lieu of notice)"

5. In fact in the case Jarnal Singh relied by the Petitioner referred above charges were framed in the inquiry. Subsequently it was found that it was not necessary to go ahead so in that case also it was found that the employer was not legally under obligation to hold any departmental inquiry into the charges.

6. The contents of the resolution and the charges, notices and letters exchanged between the parties and the contents of FIR were considered by the Single Judge properly. Therefore, we do not find any error apparent on the face of the record or any miscarriage of justice or any other reason to require interference in this appeal. Therefore, there is no merit in this appeal. Appeal dismissed.

(SMT.ROSHAN DALVI,J.) (SHRI D.G. DESHPANDE,J.)